

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH**

**CRIMINAL APPEAL NO. 155 OF 2005**

The State of Maharashtra,  
through P. S.O.Police Station Walgaon,  
Distt. Amravati.

... **APPELLANT**

**VERSUS**

Majidkhan Miyakhan Pathan  
aged about 24 years,  
R/o Chandur Bazar, Dist. Amravati.

... **RESPONDENT**

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Ms.S.V. Kolhe, APP for the Appellant.  
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**CORAM : Z.A.HAQ, J.**

**DATED : SEPTEMBER, 18, 2018.**

**ORAL JUDGMENT :**

1. None appears for the respondent/accused though served.  
Heard Ms. S.V.Kolhe, learned APP for the appellant/State.

The State has filed this appeal to challenge the judgment passed by the learned Magistrate acquitting the accused of the

charge of commission of offence punishable under Section 279, 337 and Section 304-A of the Indian Penal Code.

2. The case of the prosecution is that:

On 24<sup>th</sup> August 2001, in the morning hours, the wife of complainant Madhukar Namdeorao Kakade alongwith one Vimalabai, her daughter Shobha and another girl Bali were going to the field of Ramgopal Bansilal Vayas and when they were near Kamunja Phata, a jeep bearing registration No.MH-27-D-476 came in high speed and gave dash to Shobha, who suffered serious injuries. Shobha was taken to the hospital, where doctor declared her dead. At the time of accident, the respondent/accused was driving the jeep.

Father of Shobha lodged report against the accused. The investigation was undertaken and after the investigation was complete, chargesheet was filed against the accused for the offences punishable under Sections 279, 337 and Section 304-A of the Indian Penal Code.

3. After conducting the trial, the Magistrate has held that the prosecution has not been able to prove that at the time of the

accident, the jeep was driven rashly and negligently. The Magistrate held that the prosecution has failed to prove that the accused caused death of Shobha by giving dash to her by his jeep driving it rashly and negligently.

4. With the assistance of the learned APP, I have examined the record. The judgment passed by the learned Magistrate, including the cause title is 4½ pages. The reasons are recorded in just 1½ page.

In my view, the prosecution as well as the Magistrate has completely failed to discharge their obligation of seeing that justice is done. Though the prosecution had cited five eye witnesses, none of the eye witness is examined. Learned APP has submitted that though bailable warrant was issued against witnesses (including the eye witnesses) the report of execution of bailable warrant is not found on record.

5. On going through the impugned judgment it is clear that the proceedings are taken up only with the object of acquitting the accused. This is a glaring case of dereliction of duty not only on the part of the investigating officer (prosecution), but the learned APP

who acted as prosecutor before the Magistrate, as also on the part of the Magistrate.

6. After examining the above facts, there cannot be any other conclusion except that the prosecution as also the Magistrate has failed in their duty of imparting criminal justice. Magistrate has disposed the matter under the misconception that it is the duty of only the prosecution to see that the victims get justice and the accused is / are punished. Of course, while holding the accused guilty of commission of offence / crime, the Court has to be satisfied that the prosecution has proved the guilt of the accused beyond doubt, but there cannot be a shortcut to dispose a criminal prosecution in the manner in which it is done in the present case. The Magistrate is not helpless and is not at the mercy of the prosecutor. The Magistrate is conferred and vested with ample powers to compel the attendance of witnesses and to see that the victim does not walk away from the Court dejected and with a feeling that he is deprived of justice. The well known maxim "*not only must justice be done; it must also be seen to be done*" has to be kept in mind.

7. The manner in which the trial is conducted has to be deprecated. The judgment passed by the Magistrate acquitting the accused is unsustainable.

8. Hence, the following order:

ORDER

(1) The impugned judgment is set aside.

(2) The matter is remanded to the Judicial Magistrate First Class, Court No.3, Amravati for fresh trial. The learned Magistrate shall ensure that the trial is completed within six months. The appeal is allowed in the above terms.

(3) A copy of this judgment be sent to the Commissioner of Police Amravati Division, Amravati. The Commissioner of Police Amravati Division, Amravati shall cause an enquiry against the investigating officer, who was responsible for prosecution of the matter before the Magistrate.

(4) A copy of this judgment be sent to the Director of Prosecution, who shall cause an enquiry against the APP, who has

conducted the trial.

(5) The action taken report shall be submitted to this Court by the Commissioner of Police, Amravati Division, Amravati and the Director of Prosecution within four months.

(6) Steno copy be supplied to the learned APP.

(7) The learned APP shall send the copy of this judgment to the Commissioner of Police Amravati Division, Amravati and the Director of Prosecution.

(8) Learned Registrar (Judicial) shall send copy of this judgment alongwith the copy of the judgment passed by the Judicial Magistrate First Class, Court No.3, Amravati in Summary Criminal Case No.482 of 2001 on 06.12.2004 to the Registrar General with a request to the Registrar General to place the papers before the Hon'ble Chief Justice for perusal.

**JUDGE**

*Kavita*